

3-16-2010

# Vanderford Co., Inc. v. Knudson Respondent's Brief 1 Dckt. 37061

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IN THE SUPREME COURT OF THE STATE OF IDAHO

THE VANDERFORD COMPANY, INC., a  
Nevada Corporation; and PRIMARY  
RESIDENTIAL MORTGAGE, INC., a  
Nevada Corporation, fka VANDERFORD  
CENTER, INC.,

Plaintiffs-Counterdefendants-  
Respondents.

v.

PAUL KNUDSON, personally and individually

Defendant-Crossdefendant - Counter  
Crossclaimant-Appellant,

and

AUSTIN HOMES, LLC, a Utah Limited Liability  
Company, J.R. DEVELOPMENT, LLC, a Utah  
Limited Liability Company, and JOHN DOES 1-20,

Defendants,

And

THE PINES TOWNHOMES, LLC, an Idaho  
Limited Liability Company,

Defendant-Counter Claimant,

And

RICHARD I. GREIF and JODY L. GREIF,

Defendants-Counterclaimants-  
Crossclaimants-Counter  
Crossdefendants-Respondents.

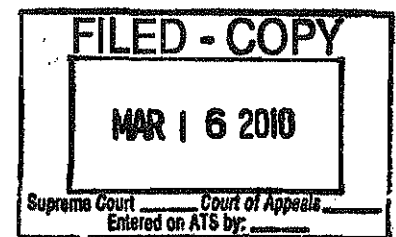
And

STATE FARM FIRE AND CASUALTY  
COMPANY,

Supreme Court No.

37061-2009

BRIEF OF RESPONDENTS  
RICHARD I. GREIF  
AND JODY L. GREIF



Intervenor. )  
\_\_\_\_\_ )

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**BRIEF OF RESPONDENTS**

**RICHARD I. GREIF AND JODY L. GREIF**

---

**Appeal from the District Court of the  
Third Judicial District of the State of Idaho  
In and for the County of Payette**

---

**HONORABLE THOMAS J. RYAN, District Judge.**

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## **STATEMENT OF FACTS**

Paul Knudson and Richard Greif entered into a business arrangement for the development of real estate in Payette called the Pines Townhomes, LLC (the LLC). Greif's duties were to market and sell the homes, while Knudson was responsible for their construction. Knudson obtained construction loans from The Vanderford Company, Inc. because one of his brothers was the president and two of his brothers were managers of Vanderford.

Vanderford loaned several hundred thousand dollars in short term loans for the construction and development of projects including the Pines Townhomes (the Pines). The LLC was unable to sell the properties as planned in order to repay the Vanderford short-term loans, and Vanderford demanded repayment. The LLC's operating agreement provided that either partner could purchase the units, but Paul Knudson did not have the financial ability to purchase them. So, he agreed that Richard Greif and his wife Jody Greif could purchase all 35 town homes as investment properties, which they did.

Without Greifs' knowledge or participation, Knudson had diverted some of the construction loan funds he borrowed from Vanderford. When Vanderford learned that Knudson had misappropriated its loan funds, it demanded that Knudson repay the monies. He could not come up with the money he had taken, and the Pines properties had been sold to the Greifs. So, Knudson told Vanderford that the Greifs hadn't actually purchased the Pines properties, but that he and Richard Greif had orally agreed that Greif would hold them in trust for

the LLC to be used as rental units and to secure the return of Vanderford's loan funds that Knudson had misappropriated.

Vanderford then filed suit against Knudson, Greifs, and the LLC seeking to recover loan funds of approximately \$500,000 and to foreclose on the Greif Trust Deeds. Knudson confessed judgment to Vanderford on his misappropriated loan funds. A jury trial was held on all other claims. The jury found: (1) a contract between Vanderford and the Greifs which was not breached; (2) no unjust enrichment due to the dealings between Vanderford and the Greifs; (3) a breached contract between the Pines and Vanderford with damages of approximately \$153,000; (4) no unjust enrichment due to the dealings between the LLC and Vanderford; (5) no contract between Knudson and the Greifs; (6) Greifs were unjustly enriched in the amount of \$237,500 through their dealings with Knudson; (7) no slander of title against the properties; and (8) Vanderford was not negligent when it did not release liens against the properties. Based on the jury's findings, the trial court did not allow Vanderford to foreclose.

Vanderford and Knudson appealed the jury verdict. This Court upheld the verdict in favor of the Greifs with respect to Vanderford's breach of contract claims on promissory notes executed by the Greifs. The Court reversed the verdict in favor of Knudson for unjust enrichment, and in favor of the Greifs on fraudulent conveyance, and remanded the case for trial.

After remand, all of the parties mediated a settlement of the case. Knudson met with Vanderford and they agreed to accept Knudson's assignment of his claims against Greifs in exchange for Vanderford's release of its judgment

against Knudson. In reliance on the Vanderford - Knudson agreement, Greifs entered into an agreement with Vanderford to convey the Pines and Quail Cove Townhomes to Vanderford in exchange for cash and Vanderford's dismissal of Knudson's assigned claims against Greifs.

However, shortly after the mediation, Knudson claimed that he did not have an agreement with Vanderford. The District Court granted Greifs' motion to enforce the settlement agreement between Vanderford and Knudson and dismissed Knudson's claims.



## **STATEMENT OF THE CASE**

This case was remanded by the Supreme Court in August, 2007. On September 11, 2008, District Judge Thomas J. Ryan issued an order referring the case for mediation. The parties met with former Supreme Court Justice Linda Copple Trout for mediation on October 14, 2008. Following the mediation, the Court was advised by Justice Trout, through the Court's secretary, that the parties had reached a settlement agreement with only a few contingencies to be completed. Thereafter, on November 10, 2008, Paul Knudson filed a "Notice of Mediation Failure and Motion to Set Jury Trial." R. p. 96. In response to Knudson's Motion, Greifs and Vanderford filed separate memoranda claiming that the case had been fully settled by agreement of all parties, including Paul Knudson. R. p. 96.

At the pretrial conference on December 1, 2008, the Court asked Knudson to file a written declaration setting out the reasons he claimed the case had not been settled. Tr. p. 11, lines 10 – 19. On December 31, 2008, Paul Knudson filed a document titled "Paul Knudson's Explanation of Failure to Reach Agreement at Mediation." Motion to Augment #2, Exh. 4.

Greifs filed a Motion to Enforce Settlement Agreement on January 8, 2009. Motion to Augment #2, Exhs. 5-8. On January 14, 2009, State Farm filed a Response to Knudson's Explanation of Failure to Reach Agreement at Mediation. Motion to Augment #2, Exh. 9. On January 26, 2009, Knudson filed a Memorandum in support of his motion to set a jury trial date and in Opposition to Greif's motion to enforce the Settlement Agreement. Motion to Augment #2, Exh.

10. On the same day, January 26, 2009, Vanderford filed its Opposition to Knudson's Memorandum Claiming Failure to Reach Agreement at Mediation. Motion to Augment #2, Exh. 11-12. On February 6, 2009, Vanderford filed its Reply to Knudson's Explanation. Motion to Augment #2, Exh. 14.

A hearing was held on March 23, 2009 on these motions and on April 2, 2009, the Court issued its Memorandum Decision and Order upon Greifs' Motion to Enforce Settlement Agreement and Dismiss Paul Knudson's claims pursuant to Rule 12(b)(6). R. p. 95 – 102. The Court granted Greifs' motion and signed an Order dismissing Knudsn's claims on April 20, 2009. R. p. 103 – 106.

Paul Knudson filed his Notice of Appeal on May 8, 2009. R. p. 107 – 117. The Supreme Court dismissed this Appeal on July 2, 2009 and issued its Remittitur on July 23, 2009. R. p. 152 – 155.

On June 19, 2009, Vanderford obtained an order for 54(b) Certification and entry of a final judgment and amended judgment, in its favor against Paul Knudson, Austin Homes LLC and JR Development LLC based upon its confession of judgment on April 19, 2002. R. p. 120 - 142.

On June 29, 2009, the Court issued a Memorandum Decision and Order granting Greifs' Motion for Attorneys Fees and Costs against Paul Knudson as a Rule 11(a)(1) sanction for his improper filing of the Notice of Mediation Failure and Claims. R. p. 143 – 151.

On September 11, 2009, the District Court issued a Rule 54(b) certification of its April 20, 2009 Order Dismissing Paul Knudson's claims. R. p. 164 – 166.

Thereafter, Paul Knudson again filed his Notice of Appeal on October 22, 2009.

R. p. 170 – 180.

## **ISSUES ON APPEAL**

1. Whether the Court properly dismissed Paul Knudson's claims based upon Knudson's settlement agreement with Vanderford?
2. Whether Greifs are entitled to an award of attorneys' fees and costs against Paul Knudson under Idaho Code §12-121 and Rule 11(a)(1) because his appeal was brought frivolously, unreasonably, or without foundation?

## ARGUMENT

### I

#### **THE DISTRICT COURT PROPERLY DISMISSED PAUL KNUDSON'S CLAIMS AGAINST THE GREIFS BASED UPON KNUDSON'S SETTLEMENT AGREEMENT WITH VANDERFORD**

- A. Paul Knudson admitted to Vanderford that they had a settlement agreement, while simultaneously pursuing his claims denying its existence.**

In granting Greifs' I.R.C.P. Rule 11(a)(1) Motion for Attorneys Fees and Costs against Paul Knudson, the District Court made specific findings that Knudson filed his notice of mediation failure in bad faith and for the purpose of harassing the Greifs. The Court noted:

"Upon a review of the record, the Court highlights the following;

1. The written explanation filed by Paul Knudson on December 31, 2008, admits Paul had an agreement with Vanderford which assigned all of his lawsuit rights to them, and because Vanderford reneged on this agreement Knudson filed the notice of mediation failure.
2. The written explanation uses terms such as corrupt lawyer, lowlife extortionist, and terrorist to describe opposing counsel and parties.
3. Vanderford asserts that the terms of the agreement between it and Knudson varied from those set forth by Knudson in his written explanation. Specifically, that Knudson is using his pretend opposition to the mediated settlement to negotiate a better deal for himself with Vanderford.
4. Exhibit 4 of Vanderford's Opposition to Paul Knudson's Memorandum Claiming Failure to Reach an Agreement at Mediation shows Paul Knudson emailed Vanderford's President, Kenneth Knudson on November 15, 2008. Paul states the following in the email:

Kenneth, send the draft copy so I can input, BUT spread the rumor that Paul is fighting you to go to trial, as I have a proposal in Ricks hands that he needs to sweeten the pot for Paul for Paul to go

along, otherwise Paul wants his day in court...But don't let Rick be un-pressured, let him sweat, think game of "chicken"...

This email was sent five days after Paul filed his notice of mediation failure and in response to Ken Knudson's email sent two days earlier which indicates Vanderford and Paul Knudson had entered into an oral settlement agreement at mediation.

5. The proper legal remedy for a breach of the agreement between Knudson and Vanderford is for one of the parties to bring a separate breach of contract action, not to file a notice of mediation failure as Knudson did.
6. Each of the parties and/or counsel present at the mediation agrees that there was a settlement reached and Paul Knudson agreed to that settlement.
7. Knudson alleged during oral argument on March 23, 2009, that there was not an agreement to settle the lawsuit because it was not reduced to writing.

The Court finds that when the facts listed above are considered as a whole the record indicates the notice of mediation failure and the claims made by Paul Knudson in opposition to the Greifs' motion to enforce the settlement were made for an improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." R. p. 148 – 149.

In its April 20, 2009 Memorandum Decision Upon Greifs' Motion to Enforce Settlement Agreement, the Court pointed out that Knudson admitted that mediation between the Greifs and Vanderford:

"...proceeded based upon the premise that he and Vanderford had reached a separate agreement and that based upon that agreement he allowed Vanderford to negotiate settlement of not only their claims, but also his claims, with the Greifs." R. p. 96.

In his "Explanation," Knudson admitted that he had an agreement with Vanderford, but claims Vanderford breached the agreement. He stated:

"Vanderford was the driving force in negotiating a settlement with Greifs, on the basis that Vanderford had a prior agreement with Paul to settle with Paul...Paul was assured repeatedly that 'we have an agreement', so Paul

allowed Vanderford to continue [at the mediation] as they saw fit...although there were 'global settlement negotiations' held with Vanderford, PRIOR to mediation, outlining the basis of a settlement between Vanderford and Paul. Paul clearly and adamantly states that those basis have NOT been satisfied, and that Vanderford has specifically denounced and repudiated any voluntary agreement with Paul..." Motion to Augment #2, Exh. 4, pp. 2-3.

On page 4 of his "Explanation," Knudson again acknowledges that because he had an agreement with Vanderford, Knudson allowed Vanderford "free rein" to negotiate a settlement with Greifs. Motion to Augment #2, Exh. 4, pp. 4.

**B. The existence of a settlement agreement between Knudson and Vanderford was supported by other substantial evidence.**

In addition to Paul Knudson's own admissions, Greifs, Vanderford and State Farm all provided evidence that Knudson had entered into a settlement agreement with Vanderford at mediation. Justice Trout, who conducted the mediation, also informed the Court that all of the parties had settled the case. R. p. 96; *Motion to Augment #2, Exh. 6, Aff. of Christ Troupis, Pg. 3, Par. 6; Motion to Augment #2, Exh. 7, Aff. of Rick Greif, Pg. 3, Par. 3-5; Motion to Augment #2, Exh. 5, Greif Memo, Pg. 3-4; Motion to Augment #2, Exh. 9, State Farm's Response, Pg. 4; Motion to Augment #2, Exh. 12, Aff. of Douglas J. Parry, Pp. 1-7, Pars. 1-26.*

**C. Dismissal of Knudson's claims was appropriate in light of the settlement agreement between Knudson and Vanderford.**

Upon finding that Knudson had a settlement agreement with Vanderford, the Court granted Greifs' motion and dismissed Knudson's claims. The Court had a sufficient basis in fact and law to support the dismissal order.

Vanderford proceeded to settle its claims with Greifs based on Vanderford's prior settlement with Knudson. Greifs relied on Vanderford's authority to dismiss Knudson's claims when Greifs entered into a settlement agreement with Vanderford. Paul Knudson knew and authorized Vanderford's representations to Greifs that he had settled with Vanderford, and that Vanderford had authority to settle Knudson's claims against Greifs.

Having entered into a valid settlement agreement with Vanderford transferring his claims against the Greifs to Vanderford, Paul Knudson's sole legal options were to sue Vanderford for breach of contract or move the Court for an order enforcing his settlement agreement with Vanderford. Knudson did not ask the Court to enforce his settlement agreement with Vanderford, and Greifs asked the Court to dismiss Knudson's claims under I.R.C.P. Rule 12(b)(6) so that Greifs could complete their settlement with Vanderford. The Court determined that since Knudson had resolved all of his claims against the Greifs through his settlement with Vanderford, Knudson no longer the right to assert any claims against Greifs, and dismissal of Knudson's claims pursuant to I.R.C.P. Rule 12(b)(6) was the appropriate course of action. That ruling was supported by this Court's decision in *Goodman v. Lothrop*, 143 Idaho 622, 151 P.3d 818, 821 (2007), in which this court declared:

"The existence of a valid agreement of compromise and settlement is a complete defense to an action based upon the original claim. *Wilson v. Bogert*, 81 Idaho 535, 542, 347 P.2d 341, 345 (1959). The agreement supersedes and extinguishes all pre-existing claims the parties intended to settle. *Id.*"In an action brought to enforce an agreement of compromise and settlement, made in good faith, the court will not inquire into the merits or validity of the original claim." *Id.*All that remains before this Court is the



question of the validity and enforceability of the mediation agreement at issue.”

In *Mihalka v. Shepherd*, 181 P.3d 473 (2008), the Court cited *Goodman, supra*, noting that “because a settlement agreement is a new contract settling an old dispute, it is better practice for litigants to amend their pleadings to add a cause of action for breach of contract than, as here, filing a motion for summary judgment... Nevertheless, we recognized that a party may ask the trial court to enforce a settlement reached in mediation before the original suit is dismissed. *Goodman, supra*, at 626, 151 P.3d at 822.

**D. The absence of a writing memorializing the terms of Knudson’s settlement agreement with Vanderford does not render it unenforceable.**

Paul Knudson claimed that his settlement agreement with Vanderford did not exist because it was not reduced to writing. That claim has no merit.

Knudson agreed to assign Vanderford his causes of action against the Greifs in exchange for Vanderford’s waiver of its judgment against Knudson. The subject matter of Knudson’s settlement agreement with Vanderford does not fall into any of the categories of contracts required by the Idaho Statute of Frauds to be in writing. I.C. Section 9-505.

Moreover, as this Court has previously noted:

“Generally, oral settlement agreements do not have to be reduced to writing to be enforceable. *Lyle v. Koubourlis*, 115 Idaho 889, 891, 771 P.2d 907, 909 (1988)”

Cited in *McColm-Traska v. Baker*, 139 Idaho 948, 952, 88 P.3d 767 (2004).

## II

### **GREIFS SHOULD BE AWARDED THEIR ATTORNEYS FEES AND COSTS FOR THE DEFENSE OF THIS APPEAL**

#### **A. An award of fees is authorized.**

I.R.C.P. Rule 11(a)(1) provides in pertinent part:

"Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one (1) licensed attorney of record of the state of Idaho, in the attorney's individual name, whose address shall be stated before the same may be filed. A party who is not represented by an attorney shall sign the pleading, motion or other paper and state the party's address....The signature of an attorney or party constitutes a certificate that the attorney or party has read the pleading, motion or other paper; that to the best of the signer's knowledge, information, and belief after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. ... If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee."

Attorneys fees may be awarded in the discretion of the Court upon a finding that an appeal was brought frivolously. This Court held in *Nelson v.*

*Nelson*, 144 Idaho 710, 718, 170 P.3d 375, 382-383 (2007):

"Idaho Code § 12-121 allows a court to award attorney fees to the prevailing party in any civil action. The power to award fees under section 12-121 is discretionary. *Chisholm v. Twin Falls County*, 139 Idaho 131, 136, 75 P.3d 185; 190 (2003). Generally, "reasonable attorney's fees will only be awarded to the prevailing party under I.C. § 12-121 when the court is left with the abiding belief that the appeal was brought, pursued or defended frivolously, unreasonably and without foundation. *Balderson v. Balderson*, 127 Idaho 48, 54, 896 P.2d 956, 962 (1995)"

An award of attorney fees under Idaho Code § 12-121 is not a matter of right to the prevailing party, but is appropriate only when the court, in its discretion, is left with the abiding belief that the case was brought, pursued, or defended frivolously, unreasonably, or without foundation. *McGrew v. McGrew*, 139 Idaho 551, 562, 82 P.3d 833, 844 (2003).

Idaho Appellate Rule 41 provides that a claim for attorneys fees on appeal must be asserted in the first brief filed by the party. Accordingly, Greifs hereby request an award of their attorneys' fees incurred on this appeal.

**B. An award of fees is warranted by Paul Knudson's conduct.**

The District Court issued an award of attorneys fees to the Greifs and against Paul Knudson for the Greifs' attorneys fees incurred in responding to Knudson's "Notice of Mediation Failure and Motion to Set Jury Trial," and in moving to enforce the Knudson-Vanderford settlement agreement and dismiss his claims. In awarding those fees, the District Court specifically found that Paul Knudson's filings were without any legal or factual merit, and filed for the purpose of harassment and/or to cause unnecessary delay and needless increase in the cost of litigation. R. p. 148-149 (*quoted supra on p.12* )

The admissions in Paul Knudson's "Explanation" and his email to Kenneth Knudson prove that his filings were not in good faith, but solely for the purpose of harassing and causing injury to the Greifs. In fact, it appears that Paul Knudson was simply attempting to extort additional money and/or property out of the Greifs by misrepresenting the existence of his settlement with Vanderford. The District Court found that Paul Knudson's conduct was sanctionable as an abusive

litigation practice within the purview of Rule 11(a)(1). Knudson's continued prosecution of these same frivolous claims on appeal has no more merit than the claims he frivolously pursued in the District Court. It is an abusive litigation tactic, needlessly wastes judicial resources, unnecessarily increases the cost of this litigation, and should be sanctioned by this Court.

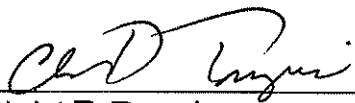
Greifs therefore request an award of their attorneys fees incurred on this appeal against Paul Knudson.

### **CONCLUSION**

Based on the foregoing, the judgment of the District Court dismissing the claims of Paul Knudson against Respondents Richard I. Greif and Jody L. Greif should be affirmed, and the Greifs should be awarded their reasonable attorneys fees and costs on appeal.

Dated: March 16, 2010

TROUPIS LAW OFFICE, P.A.

  
\_\_\_\_\_  
Christ T. Troupis  
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**CERTIFICATE OF SERVICE**

I HEREBY certify that on March 16, 2010, I caused to serve two (2) true and correct copies of the foregoing Brief of Respondents' Richard I. Greif and Jody L.


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